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RELEASED

**REPORT TO THE
CONSERVATION AND NATURAL
RESOURCES SUBCOMMITTEE
COMMITTEE ON GOVERNMENT
OPERATIONS
HOUSE OF REPRESENTATIVES**

**Improvements Needed
In The Assessment And Collection
Of Penalties--Federal Coal Mine
Health And Safety Act Of 1969**

B-170686

Bureau of Mines
Department of the Interior

B-170686

July, August and Sept.
1972

**BY THE COMPTROLLER GENERAL
OF THE UNITED STATES**

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JULY 5, 1972

FILE COPY - COMP GEN



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON DC 20548

B-170686

R Dear Mr. Chairman

In response to your request of September 24, 1971, this is our report on improvements needed in the assessment and collection of penalties under the Federal Coal Mine Health and Safety Act of 1969, as administered by the Bureau of Mines, Department of the Interior.

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Our principal observations are summarized in the digest at the beginning of the report. We have not obtained formal comments from the Department of the Interior on these matters.

Your office requested that we compare the procedures used by other Government agencies in assessing and collecting penalties for programs that are similar to the Department's program. There were no similar programs which we considered suitable for comparison purposes.

On March 2, 1972, a group of coal mine operators filed a complaint for injunction and declaratory judgment against the Secretary of the Interior and responsible Department officials in the United States District Court for the District of Columbia. Included in the complaint were allegations concerning the methods and procedures used by the Bureau in applying six statutory factors to each violation. Some of these allegations relate to the matters discussed in chapter 4 of this report. Therefore, we wish to point out that public disclosure of the contents of chapter 4 could possibly prejudice the Government's case. Any additional release of this report will be made only upon your agreement.

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Sincerely yours,

Comptroller General
of the United States

The Honorable Henry S. Reuss
Chairman, Conservation and
Natural Resources Subcommittee
Committee on Government Operations
House of Representatives

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COMPTROLLER GENERAL'S REPORT TO
THE CONSERVATION
AND NATURAL RESOURCES SUBCOMMITTEE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

IMPROVEMENTS NEEDED IN THE ASSESSMENT
AND COLLECTION OF PENALTIES--FEDERAL
COAL MINE HEALTH AND SAFETY ACT OF 1969
Bureau of Mines
Department of the Interior B-170686

D I G E S T

WHY THE REVIEW WAS MADE

At the request of the Subcommittee Chairman, the General Accounting Office (GAO) reviewed the Department of the Interior's implementation of the civil penalty provisions of the Federal Coal Mine Health and Safety Act of 1969. The request was concerned particularly with timely and efficient assessment and collection actions and the consideration given to six statutory factors in assessing civil penalties for violations of the mandatory Federal health and safety standards by coal mine operators and miners.

GAO did not obtain formal comments from the Department of the Interior on these matters.

Background

The act and its implementing regulations provide certain procedures for the assessment and collection of penalties. The procedures include consideration by the Bureau of Mines of six statutory factors (see p 24), a mine operator's right to protest a penalty, and his right to a public hearing (See p 6).

From April through November 1970, the Bureau was restrained by a court order from, among other things, assessing penalties in accordance with a penalty schedule published by the Department. The Bureau's Office of Assessment and Compliance Assistance began assessing penalties in February 1971 and, as of December 31, 1971, had assessed penalties totaling \$12.5 million. This amount was reduced by \$2.7 million through amending or vacating assessment orders and by \$1.4 million through collecting penalties, leaving an outstanding balance of \$8.4 million as of December 31, 1971. (See p 8)

FINDINGS AND CONCLUSIONS

Assessment delays

GAO sampled assessments and found that (1) about 4 months elapsed from citation of a violation by a mine inspector to assessment of a penalty and (2) about 10 weeks elapsed from the request for a hearing by a mine operator to

JULY 5, 1972

the referral to the Solicitor's Office for initiation of the hearings process by the filing of a petition with the Department's Office of Hearings and Appeals (See p 10)

The Chief of the Assessment Office stated that, although the initial backlog of violations awaiting assessment was eliminated by June 1971, the time required for processing violations resulted in further backlogs and time lapses in assessing penalties through most of 1971. He stated that after January 1972, all violations were assessed within 30 days of receipt by the Assessment Office.

This 30-day period was not comparable to the 4-month average mentioned above because it did not include the time from the citation of the violation to the time of receipt by the Assessment Office. GAO did not verify the 30-day assessment time.

The Bureau's management control system was not adequate to readily identify the status of cases and to provide data needed to identify and correct the causes of processing delays (See p 13)

Because the Bureau was making changes in its management system at the time of GAO's review, GAO was not able to evaluate how well the system will meet management's needs.

The Assessment Office has taken actions which have resulted in

- eliminating the large initial backlog of violations awaiting penalty assessments,
- decreasing the percentage of cases in which penalties are reduced as a result of protests from mine operators, and
- increasing the amounts of penalties assessed against mine operators
(See p. 16)

Hearings delay

Significant delays in referring cases for hearings and in conducting hearings on cases disputed by mine operators resulted in a backlog of 1,062 cases awaiting hearings (\$2.8 million in assessments) by December 31, 1971 (See p 21)

From July to December 1971, the Department's Office of Hearings and Appeals resolved about 31 penalty cases a month. GAO estimated that, at this rate, it would take over 2-1/2 years to resolve the hearings backlog of December 31, 1971.

The Director of the Hearings Office believes that proposed changes in the regulations will expedite disposition of the cases. Also, action is being taken to hire more hearings examiners and attorneys to process the backlog. GAO believes that, within a reasonable time after implementing the corrective actions, the Department should evaluate their effectiveness (See p 23)

Consideration of factors required by law

Bureau officials stated that six statutory factors are considered in making assessments. However, written guidelines had not been developed to aid the assessors in considering the factors, the consideration given to each of the factors by the assessors was not documented, and no such documentation was required (See p 24)

GAO believes that written guidelines defining the factors and the consideration and weight that should be given to each factor would (1) assist the assessors in considering the factors, (2) help provide uniform consideration of the six factors, and (3) facilitate evaluation of assessor performance. Assessors should be required to document in the Bureau's files the consideration given each factor in assessing a penalty (See p 28)

Although the six factors must be considered, a description of how the factors were applied in determining a specific penalty is not required in the proposed order of assessment sent to a mine operator. However, the guidelines, as recommended by GAO, should be made available to the mine operators so that they would have a better basis for understanding how penalties are assessed

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On March 2, 1972, a group of coal mine operators filed a complaint for injunction and declaratory judgment against the Secretary of the Interior and responsible Department officials in the District Court of the United States for the District of Columbia. Among the matters included in the complaint were allegations concerning the methods and procedures used by the Bureau in applying the six statutory factors to each violation. Some of these allegations relate to the matters discussed above. Therefore, public disclosure of the contents of chapter 4 of this report could possibly prejudice the Government's case.

Limited collection results

GAO estimates that, as of November 30, 1971, there were 1,785 assessment cases on which collection action should have been taken. As of December 31, 1971, no collection action had been taken on about 60 percent of these cases and action on the remaining 40 percent had not been timely (See p 33)

The Chief of the Assessment Office stated that primary efforts have been, and continue to be, directed toward assessment of penalties (See p 34)

The Federal Claims Collection Act and its implementing standards, issued jointly by the Department of Justice and GAO, are applicable to the collection of civil penalties under the Federal Coal Mine Health and Safety Act of 1969 (See p 36)

The standards implementing the Federal Claims Collection Act provide that prejudgment interest cannot be demanded or collected on civil claims unless the statute under which the claim arises authorizes the collection of such

interest Since the Federal Coal Mine Health and Safety Act of 1969 contains no such authorization, the Bureau cannot charge interest for late payment of civil penalties (See p 31)

Staffing of Assessment Office

By December 31, 1971, the Assessment Office had filled only four of the 12 permanent assessor positions authorized under fiscal year 1972 appropriations, because of problems in attracting qualified personnel and because of manpower limitations imposed by the Civil Service Commission in August 1971 To supplement the staff of assessors, mine inspectors were temporarily detailed to the Assessment Office (See p 39)

The Assessment Office began developing plans in November 1971 to decentralize the assessment operation by establishing four field offices Officials believed that this decentralization would assist them in attracting qualified personnel

RECOMMENDATIONS OR SUGGESTIONS

The Director, Office of Survey and Review, should be given the responsibility to

--Determine whether the revised management system is effective in meeting management's needs, after the system has been in operation for a reasonable period (See p 20)

--Evaluate the effectiveness of the actions planned to achieve speedy processing of cases, after they have been implemented for a reasonable period (See p 23)

✓ The Director, Bureau of Mines, should be required to

--Issue guidelines defining each of the six factors and describing the consideration and weight that should be given each factor in determining the amount of a penalty (See p 28)

--Make the guidelines available to mine operators (See p 28)

--Provide for adequate documentation by the assessors in the Bureau's files of the consideration and weight given each factor in assessing a penalty (See p 29)

--Give the same priority to collecting penalties as that given to assessing penalties (See p 38)

CHAPTER 1

INTRODUCTION

Pursuant to a request dated September 24, 1971, by the Chairman of the Conservation and Natural Resources Subcommittee of the House Committee on Government Operations and agreements reached with the Chairman's office, we have reviewed the implementation of the civil penalties provisions of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801) by the Bureau of Mines, Department of the Interior. The request was concerned particularly with the timely and efficient assessment and collection actions and the consideration given to six statutory factors in assessing civil penalties. We did not obtain formal comments from the Department of the Interior on these matters.

In an earlier report (B-170686, May 13, 1971) to the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, the General Accounting Office (GAO) discussed problems in implementing the Federal Coal Mine Health and Safety Act of 1969. Before passage of this act, the Bureau carried out a coal mine inspection and investigation program under the Federal Coal Mine Safety Act of 1952. The 1969 act repealed the 1952 act and placed increased responsibilities on the Bureau, including the assessment and collection of civil penalties for violations by coal mine operators and miners of the mandatory health and safety standards.

The stated purposes of the 1969 act are to (1) establish interim mandatory health and safety standards and direct the Secretary of the Interior to promulgate improved mandatory health and safety standards to protect the Nation's coal miners, (2) require that each coal mine operator and miner comply with such standards, (3) cooperate with and provide assistance to the States in developing and enforcing effective State health and safety programs, and (4) improve and expand, in cooperation with the States and the coal mining industry, research and development and training programs aimed at preventing coal mine accidents and occupational diseases.

In carrying out its responsibilities under the act, the Bureau conducts investigations and inspections to

determine the extent of compliance with the mandatory health and safety standards which have been issued by the Secretary of the Interior, issues violation citations, assesses and collects penalties from miners and mine operators who violate the law and regulations, and establishes and conducts education and training programs to improve health and safety conditions and practices in mines.

PENALTY PROVISIONS OF THE ACT

The act authorizes the Secretary to assess civil penalties against coal mine operators for violations of health and safety standards. The maximum penalty for each violation by a mine operator is \$10,000. Any miner who violates the mandatory safety standards related to smoking or the carrying of smoking material underground is subject to a maximum penalty of \$250 for each violation.

The act provides that a civil penalty be assessed only after the person charged with a violation has been given an opportunity for a formal hearing. If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed, the Secretary is required to file a petition for enforcement in any appropriate district court of the United States.

The act provides for a fine and/or imprisonment for a mine operator who willfully violates a mandatory health and safety standard or knowingly does not comply with an Order of Withdrawal, which closes all or a portion of a mine until the violation is corrected.

CURRENT IMPLEMENTATION OF PENALTY PROVISIONS OF THE ACT

On January 16, 1971, the Secretary published regulations in the Federal Register, which established new procedures for the Bureau to follow in assessing civil penalties for violations of the act. During January 1971 the Bureau's Office of Assessment and Compliance Assistance was established in Washington, D.C., to assess and collect civil penalties. A description of the procedures provided for in these regulations and the Bureau's implementation follows.

The Bureau has nine coal mine health and safety districts which are responsible for conducting coal mine inspections and issuing citations for violations of the act. A citation consists of either (1) an Order of Withdrawal or (2) a Notice of Violation which informs the mine operator of the violation found and states a time by which the violation must be corrected. If the mine operator does not correct a violation cited on a Notice of Violation within the required time, or as extended, the act provides that an Order of Withdrawal shall be issued.

After the mine operator has been notified of the violation and has corrected it, the violation order or notice and information on its correction is forwarded by the mine health and safety district office to the Assessment Office. An assessment officer evaluates the violation and determines the amount of the penalty. The Assessment Office sends a proposed order of assessment to the mine operator, which cites the health or safety standard violated and the amount of the proposed penalty.

The mine operator has 15 working days, after receipt of the proposed assessment order, to pay the penalty amount, protest the assessment, or ask for a formal hearing. When a mine operator fails to respond to the order within the 15 days, his right of protest and his right to a formal hearing are considered waived and the proposed order becomes the final order of the Secretary.

Any protest by the mine operator must be in writing and should contain his reasoning on why a penalty should not be imposed or why it should be reduced. The mine operator may request a meeting with an assessment officer to discuss the protest. Upon receipt of a protest an assessment officer reviews the protest and amends (reduces the amount of the penalty), affirms (sustains the penalty amount), or vacates (voids the penalty amount) the proposed assessment order and notifies the mine operator accordingly.

If a penalty amount is proposed after the review of the protest by the Assessment Office, the mine operator has 15 working days from receipt of the amended or affirmed assessment order to either pay the assessment or ask for a hearing. Failure to respond within the 15 days results in the proposed assessment order's becoming the final order of the Secretary.

When the mine operator fails to pay the penalty, the Assessment Office follows procedures established to implement the Federal Claims Collection Act (31 U.S.C. 951) and the regulations issued thereunder (4 CFR 101). Continued failure to pay will result in the assessment order's being forwarded through the Department's Office of the Solicitor to the Department of Justice for enforcement in a district court of the United States.

When the mine operator requests a formal hearing, a petition listing the violations cited against the operator is filed by the Solicitor's Office with the Department's Office of Hearings and Appeals and the operator is notified that he must file a response giving his position on each violation cited in the petition within 20 days. The hearings are conducted by hearings examiners within this office. The mine operator may appeal the hearing decision to the Hearings Office's Board of Mine Operations Appeals. The Board's decision completes the administrative remedies available to the mine operators.

Penalty amounts collected are processed by the Bureau's Division of Finance, and assessment and collection data are compiled by the Bureau's Division of Automatic Data Processing, both of which are located in Denver, Colorado.

PENALTY ASSESSMENT STATISTICS

Records indicate that, during the period January 16 through December 31, 1971, the Bureau assessed mine operators penalties totaling about \$12.5 million for approximately 68,000 violations, involving 4,984 cases. A case consists of any number of violations for a mine that are assessed at one time.

The \$12.5 million of assessments was reduced by about \$2.7 million through amending or vacating assessment orders. Of the remaining \$9.8 million, approximately \$1.4 million had been collected, leaving a balance outstanding at December 31, 1971, of about \$8.4 million. The status of the \$8.4 million balance was, as follows:

Awaiting reassessment actions, possible protests, or requests for hearings	\$2,500,000
Awaiting hearings or final Hearings Office decisions	2,800,000
Collection actions started or pending	<u>3,100,000</u>
Total	<u>\$8,400,000</u>

CHAPTER 2

ASSESSMENT AND PENALTY REVIEW

BY THE BUREAU OF MINES

Delays occurred between (1) the time that mine inspectors cited mine operators for violations and the time that the proposed assessment orders were issued by the Assessment Office and (2) the time that mine operators requested hearings on disputed assessment orders and the time the Assessment Office referred these cases to the Solicitor's Office.

The Bureau did not have a management control system capable of readily identifying the status of cases requiring assessment action and providing information which, we believe, it needed to identify and correct the causes of processing delays.

Certain actions were taken by the Assessment Office which resulted in (1) eliminating the large initial backlog of violations awaiting penalty assessments, (2) decreasing the number of penalties reduced as a result of protests from mine operators, and (3) increasing the average amounts of penalties assessed against mine operators.

In reassessment of protested cases, mine operator protests generally were received within 30 days after the proposed assessments were mailed and the majority were processed within 30 days of receipt.

DELAYS IN ASSESSING PENALTIES AND PROCESSING CASES

On March 28, 1970, the Secretary established procedures for assessing civil penalties under the 1969 act. In general the procedures provided that penalties for violations could be paid by the mine operator in accordance with a penalty payment schedule included in the regulations. If voluntary payment was not received from the mine operator within 30 days, an assessment of penalties was to be made by the Board of Mine Operations Appeals. The Board was required to assess a penalty after considering certain factors specified in the act.

On March 30, 1970, the Bureau began making inspections and citing violations under the new law. In April 1970 a U.S. district court issued an order which restrained the Secretary from, among other things, assessing penalties and accepting payment in accordance with the penalty schedule published in the March 28, 1970, regulations. The court order, however, did not prohibit the Secretary from initiating proceedings with the Board for the assessment of penalties.

During the period of the temporary restraining order, mine inspections continued and violation citations were issued. Violation citations, however, were not filed with the Board for the assessment of civil penalties.

The restraining order was dissolved on November 11, 1970, and on January 16, 1971, the Department issued revised regulations and established new assessment procedures. As violations had been cited but not assessed since May 1970, the Assessment Office, which was established in January 1971, began with a backlog of about 39,000 violations and there was a lengthy time lag between the citation of violations during 1970 and their assessment in 1971.

Although, according to an Assessment Office official, the initial backlog was processed by June 1971, Bureau records indicated that, as of December 31, 1971, there were about 24,000 additional violations (10,000 of which were in district offices and, therefore, could not have been assessed) cited that had not been assessed.

We found that the Bureau continued to take a long time to assess a penalty for a violation. For a sample of 65 assessment cases¹ containing 746 violations, the average time between citation of the violation by the mine inspector and the issuance of a proposed assessment order was 129 days,

¹A statistically random selection was made of 100 mines for which there was a total of 190 assessment cases from January through November 1971. The 65 cases cited above represent all the cases within the 190, in which the violations were dated after January 1971.

ranging from 23 to 279 days. The 129 days includes time given the mine operator to correct the violation, as well as district office and Assessment Office processing time.

The Chief of the Assessment Office stated that, although the initial backlog was eliminated by June 1971, the time required for processing it resulted in a further backlog of new violations awaiting penalty assessment and caused time lapses in assessing penalties through most of 1971. As of February 18, 1972, the number of unassessed violations in the Assessment Office was down to 5,800. After January 1972 all violations were being assessed within 30 days of receipt by the Assessment Office. We were not furnished any documentation in support of the statement by the Chief of the Assessment Office. The 30-day processing time cited by the Chief is not comparable with the 129 days in our sample because the 30-day period does not include the time from the citation of the violation to the time of receipt of the violation citation by the Assessment Office. Because we completed our fieldwork in January 1972, we did not develop more recent information on the assessment of penalties.

From the time of its establishment in January 1971 through December 31, 1971, the Assessment Office referred 1,078 disputed assessment cases to the Solicitor's Office for hearings. As of December 31, 1971, 169 disputed cases comprising 3,400 violations awaited referral by the Assessment Office to the Solicitor's Office.

Our analysis of 50 cases¹ referred to the Solicitor's Office as of November 12, 1971, showed that the average time from the date of the mine operator's request for a hearing to the date the case was referred to the Solicitor was about 10 weeks, ranging from 2 to 31 weeks.

According to the Chief of the Assessment Office, primary efforts have been, and continue to be, directed toward assessment of penalties and attempts to collect penalties

¹The 50 cases represent cases randomly selected from the 674 cases the Bureau records showed had been referred to the Solicitor's Office as of November 12, 1971.

and refer cases for hearings have been secondary. He did not consider 10 weeks an excessive time for referring cases for hearings. The work in preparing a case for referral was generally of a routine nature and consisted of (1) assembling and duplicating all withdrawal orders, violation notices, abatement notices, and time extensions on the case, (2) preparing a form letter, one copy of which went to the mine operator and the other to the Solicitor's Office, and (3) checking to ensure that all required documents had been duplicated.

Adequate system needed to identify
delays and cases requiring action

Information to identify causes of delays in the penalty process was generally not readily available at Bureau headquarters, either because the information was not maintained or because the only source was several separately maintained records that were not always current or complete. Until information of this nature is available, responsibilities for delays and the specific corrective actions needed to expedite the assessment and collection of penalties cannot be readily determined at Bureau headquarters.

The previously mentioned average of 129 days for assessing violations involved action by several groups of people. Because data was not available at Bureau headquarters to show the time taken for correcting the violations, for processing violations in district offices, or for assessing penalties at the Assessment Office, the responsibilities for delays could not be determined.

A Bureau official advised us that statistics were being developed on violation correction time. According to this official, although there were no time standards for correcting violations, his office, on the basis of general knowledge, had advised certain field activities that times permitted for correction had been too liberal. The Chief of the Assessment Office stated in April 1972 that all violation citations were then being time stamped upon receipt. Such action would allow the Assessment Office to determine the time it took to assess a penalty.

Information to identify Assessment Office delay problems in processing disputed cases and cases requiring collection action (see chap. 5) was also not readily available. Under procedures established prior to October 1971, a time-consuming examination of several records was necessary to ascertain the status of each case and to determine the processing action required. Also, an official stated that the currency and completeness of the information contained on some of these records were questionable.

To correct these deficiencies, the Assessment Office implemented a new control system in October 1971, which provided for manually entering on one record all actions taken on each case from the date the violation citations were received from the mine health and safety district offices. This manual system included the individual status of disputed cases and collection cases assessed in October and subsequent months. The cases assessed before October were not initially included in the new system, however, by March 1972, according to the Chief of the Assessment Office, these cases were included in the system.

Data accumulation under the new manual system was an improvement because individual case status was identified on one record. However, a card file had to be used to locate a case in this record and another card file was maintained to identify the date and the type of action next required by the Assessment Office for each case.

The Chief of the Assessment Office stated in April 1972 that the new manual system had been redesigned to utilize only one control card for each case. A time-consuming examination of all case cards under the new manual system would be necessary to provide summary information which, we believe, is needed by management on a periodic basis--such information as the number and dollar amount of cases subject to collection, the number of cases in which hearings have been requested, the age of the cases requiring action, the timeliness of collection and referral actions taken, and the results achieved from various collection actions.

The Bureau established an automated system for processing data on the assessment actions taken by the Assessment Office. However, Assessment Office officials decided that

the system was not adequate for controlling the status of assessment cases and for providing summary information. Therefore during November 1971 the Bureau began revising the content and format of the system's output reports and included provisions for case status information. Because the revised system had not been fully developed at the completion of our review in January 1972, we were not able to evaluate its potential effectiveness in meeting management's needs.

AGENCY ACTION TO REDUCE INITIAL ASSESSMENT
BACKLOG, DECREASE THE PERCENTAGE OF
PENALTIES AMENDED, AND INCREASE
AMOUNTS OF PENALTIES

Certain actions were taken by the Assessment Office which resulted in eliminating the initial backlog of violations awaiting penalty assessment, decreasing the percentage of cases in which the penalties were reduced as a result of protests from mine operators, and increasing the average amounts of penalties assessed against mine operators.

Initial backlog of violations eliminated

Action was taken to eliminate the backlog of 39,000 violation citations that existed when the Assessment Office was established in January 1971. According to an official, the 39,000 violations had been processed by June 1971. Records show that no penalties were assessed for about 12,000 of these violations primarily because, when they occurred, the mine operators generally lacked equipment and technical personnel. Of the remaining violations, about 10,000 were assessed penalties in February 1971, about 13,000 in March 1971, and the balance later.

Reduction in percentage
of cases being amended

Beginning with cases assessed in May 1971, there was a significant decrease in the percentage of cases in which the penalties were reduced by the Assessment Office after consideration of protests submitted by the mine operators. We analyzed Bureau data on the 3,578 cases which had been assessed from February through September 1971 and found that most cases which had been amended were initially assessed from February through April 1971.

Bureau statistics of April 1, 1971, which were furnished to the Subcommittee by the Department, indicated that 94 percent of the cases assessed as of April 1, 1971, were amended. Analysis indicated that the percentage of cases amended decreased from 74 percent for the 901 cases initially assessed in March 1971 to about 19 percent for 1,760 cases initially assessed from May through September 1971.

Causes for the large number of protests and amendments concerning cases assessed from February through April 1971 cannot be definitely established because of a lack of documentation. Our review of protests and our discussions with Assessment Office officials indicated that the causes were in two general categories.

--During the early months when violations were first being cited, there was considerable confusion concerning the implementation of the provisions of the act on the part of both mine operators and Bureau inspection and assessment personnel. Assessment officials indicated that they considered this early period a learning period for the mine operators.

--Assessments for violations cited within the first year were based on a penalty schedule generally higher than those in effect when the violations had been cited, and assessments were generally higher than had been anticipated by the mine operators.

The Chief of the Assessment Office gave the following reasons for the continued protests on proposed assessment orders.

1. An operator's attorney wishes to raise a legal point on some matter which he feels the inspector has not considered.
2. The operator feels that he has a sufficiently good case to obtain a reduction in the proposed penalty.
3. The operator wants to avail himself of every opportunity to have his assessments reduced.

Penalty schedule problems resolved
and average penalty amount per
violation increasing

On January 16, 1971, the Secretary established a new schedule for assessing penalties under the act. The chief assessment officer informed us that an informal schedule was used for assessing violations cited by the mine inspectors before April 1, 1971. The informal schedule provided, in

general, for lower penalty amounts than the official schedule.

Analysis of penalty amounts initially assessed by the Assessment Office from February through November 1971 showed that the average assessment per violation issued (1) from February through July ranged from a low of about \$60 to a high of about \$160 and (2) from August through November ranged from a low of about \$265 to a high of about \$360.

In the absence of complete documentation, precise reasons for the increase in the average penalty amount could not be ascertained. We believe, however, that the change may be attributed primarily to the following factors.

- The assessments made during the earlier months were for violations cited before April 1, 1971, and were assessed at the lower rates contained in an informal penalty schedule. Violations cited on or after April 1 were assessed at the higher rates provided for in the official penalty schedule.
- According to the chief assessment officer, beginning with violations cited in April 1971, the past history of violations by the mine operators was taken into consideration; thus, later assessments for repeated violations showed increases in the penalty amounts.

HANDLING OF PROTESTS

The Assessment Office considers receipt of the protest within 30 calendar days after the date it mails the assessment to the mine operator as satisfying the requirement in the Department's regulations that a protest be made within 15 working days of receipt of the proposed assessment by the mine operator. Responses to assessment orders in the form of protests generally have been submitted by mine operators within the 30 calendar days.

Our review of a group of 50 protested cases¹ showed that the average response time, from date of assessment order to receipt of the protest in the Assessment Office, was 22 calendar days. Two of the protests exceeded the 30-day criteria, one taking 33 days and the other 38 days.

The Assessment Office had not rigidly adhered to the 30-calendar-day protest standard. It did not consider the delays for the two late protests above to be a basis for finalizing the proposed assessment order or to be a waiver of the mine operator's right to protest. In April 1972 the Chief of the Assessment Office advised us that he instructed his staff to adhere strictly to the 30-day standard.

In the sample of 50 cases previously mentioned, the time for reassessment of a case averaged 20 days, and 43 of the 50 cases were reassessed within 30 days. The chief assessment officer informed us that priority had been given to reassessing protested assessments even though there was no time limit prescribed for reassessment.

CONCLUSIONS

The processing of penalty assessment cases can be expedited through the development and use of a management control system which would readily identify cases requiring action by the Assessment Office and would provide the necessary information for identifying the causes of delays in the assessment process.

An Assessment Office official informed us in April 1972 that the automatic data processing system which the Bureau began revising in November 1971 was fully operational. However, at the time of our review, it had not been fully developed; therefore, we were not able to evaluate how it will meet management's needs.

¹The cases for this group were selected on a nonrandom basis from records which indicated that the cases had been reassessed because the penalties had been protested.

RECOMMENDATION TO THE
SECRETARY OF THE INTERIOR

We recommend that the Director, Office of Survey and Review, be given the responsibility to determine whether the revised management system is effective in meeting management's needs, after the system is in operation for a reasonable period.

CHAPTER 3

DELAYS IN HEARING DISPUTED ASSESSMENTS

Significant delays in referring cases for hearings and in conducting hearings on penalty cases disputed by the mine operators resulted in a backlog of 1,062 cases, involving a total of \$2.8 million in assessments, as of December 31, 1971. The backlog consisted of 315 cases which the Assessment Office had referred to the Solicitor's Office but which had not been referred to the Hearings Office, 578 cases which the Solicitor's Office had referred to the Hearings Office but which had not been heard, and 169 cases in which requests for hearings had been received from mine operators but which had not been referred by the Assessment Office to the Solicitor's Office for action.

After a case is referred for a hearing by the Assessment Office, the Solicitor's Office is responsible for filing a petition, which lists the violations cited against the mine operator, with the Hearings Office. Hearings are conducted by hearings examiners following procedures prescribed by the Administrative Procedures Act (5 U.S.C. 554). A hearing consists of a formal review of all evidence related to the violation. The Solicitor's Office represents the Bureau in these hearings. Hearings can be deferred for such reasons as the hearings examiner's requiring mine operators and the Solicitor's Office to prepare and file prehearing briefs. Furthermore, mine operators can request continuances which delay the hearings process.

At December 31, 1971, 315 disputed cases had been referred to the Solicitor's Office but had not been filed for hearings. Our review of 50 cases¹ referred to the Solicitor's Office as of November 12, 1971, indicated that, as of November 30, 1971, 29 of the cases had been referred to the Hearings Office and 21 were still in the Solicitor's Office. The average time to file the 29 cases was over 3 weeks and

¹The 50 cases were randomly selected from the 674 cases the Bureau records showed had been referred to the Solicitor's Office as of November 12, 1971.

ranged from 1 day to 10 weeks. The 21 cases had been in the Solicitor's Office for an average of 5 weeks, as of November 30, 1971. There were 169 cases, in which mine operators had requested hearings, that had not been referred by the Assessment Office to the Solicitor's Office for action.

A Solicitor's Office official informed us that by mid-January 1972 penalty cases were being filed with the Hearings Office within a few days. This was the result of a change in Hearings Office rules which eliminated the requirement that the Solicitor's Office obtain and duplicate certain documents that were usually quite voluminous. He noted that penalty cases constituted only a portion of the Solicitor's Office's responsibilities in the mine safety area.

As of December 31, 1971, 763 penalty cases had been filed with the Hearings Office, about 350 of which were filed before November 1971. Penalty payments had been received from 143 operators after they filed for hearings. Apparently the notification to the operators of the filing led to payment in these cases, which indicates that timely filing of cases could hasten the collection of penalties in some cases. Also, 42 hearings had been conducted and seven decisions had been rendered by examiners from July to December 1971, and at December 31, 1971, hearings had not been held for the remaining 578 cases.

From July to December 1971, the Hearings Office resolved about 31 penalty cases a month. At this rate it would take over 2-1/2 years to resolve the 1,062 cases awaiting hearings at December 31, 1971.

In March 1972 the Director of the Hearings Office informed us of the following steps that had been or were being taken to improve the settlement of disputed mine cases.

- Changes in the regulations were under consideration which would (1) place the burden on the mine operators for initiating certain actions in the hearings process and (2) provide for holding hearings in nine designated cities. The Hearings Office believes that these changes will expedite disposition of the cases.

--Steps were being taken to hire four additional hearings examiners and to reassign one from another area. These steps would increase the number of hearings examiners in the penalty area from four to nine.

--Hearings examiners usually want the hearings transcripts before issuing decisions. Previously, the commercial court reporting services used required extensive periods of time to prepare hearings transcripts. The Hearings Office therefore inaugurated its own court reporting service which, these officials feel, will save time.

The planned increase in the number of hearings examiners and the resulting acceleration in the hearing of disputed mine penalty cases would have the effect of increasing the workload of the Solicitor's Office. An official informed us that an attorney would shortly be assigned to the coal mine health and safety area and that he had been given authority to hire one additional attorney for this area.

CONCLUSION

Changes in the regulations have been proposed which, the Hearings Office believes, will expedite disposition of the cases, and action is being taken to obtain more hearings examiners and attorneys for the processing of the sizable backlog of disputed penalty assessment cases. We believe that an evaluation should be made of the effectiveness of actions being taken to avoid a backlog.

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

We recommend that the Director, Office of Survey and Review, be given responsibility to evaluate the effectiveness of the actions, planned to achieve expeditious processing of cases, after they have been implemented for a reasonable period.

CHAPTER 4

NEED FOR GUIDELINES AND DOCUMENTATION

IN CONSIDERING THE SIX FACTORS REQUIRED BY LAW

The Federal Coal Mine Health and Safety Act of 1969 specifies that the following six factors be taken into consideration in determining the amount of the penalty to be assessed for a violation

- 1 The operator's history of previous violations.
- 2 The appropriateness of the penalty to the size of the operator's business
- 3 Whether the operator was negligent
- 4 The effect on the operator's ability to continue in business
5. The gravity of the violation
- 6 The demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation

Bureau officials stated that the six statutory factors were considered in making assessments. We noted, however, that (1) no written guidelines had been established to aid the assessors in considering the factors, (2) there was no documentation of the consideration given to each of the factors by the assessors, and (3) no such documentation was required

We believe that written guidelines which define the factors and the consideration and weight to be applied to each would (1) assist the assessors in considering the factors, (2) help to provide uniform consideration of the six factors by the several assessors, and (3) facilitate evaluation of assessor performance

GUIDELINES

The Bureau has not prepared guidelines for assessors to use in considering the factors for penalty assessment and in deciding how the factors should be weighted in determining the amount of the penalty within the ranges provided in the penalty schedule. Assessors relied on their personal judgment, their mining and inspection experience, and informal policy-setting conferences to define and weight these factors. The chief assessment officer informed us that, when inspectors were temporarily assigned as assessors, they were given an oral presentation concerning the assessment procedures and the consideration to be given to the six factors.

The official penalty schedule, established in January 1971 and used in assessing penalties for violations cited after April 1, 1971, provided for ranges in the dollar amounts of penalties to be assessed, depending on the gravity of the violations. For example, the penalty range for a nonserious violation was from \$25 to \$500.

A GAO sample of about 400 violations¹ assessed from April through December 1971 showed that about 50 percent of the penalties were assessed at the minimum amounts. Mines producing 2,000 tons, or more, of coal a day were cited for 50 of the violations at minimum amounts.

Because of the lack of any written guidelines defining the factors and describing the consideration and weight to be given each and the lack of documentation on the consideration given to each of the factors, we were unable to determine the adequacy of the consideration given to the six factors and the basis for the penalties assessed in these sample cases.

To assist the assessors in the consideration given to the six factors in determining the amounts of penalties to be assessed, guidelines are needed to define each of the

¹The violations were contained in 52 proposed assessment cases from 190 randomly selected cases in which the violations were dated April 1, 1971, and after.

factors and to describe how they are to be considered, as well as the weight to be given each factor. Such guidelines would assist (1) assessors in determining penalty amounts and (2) assessors, assigned to reassess disputed penalties, and supervisory personnel, assigned to review assessments, to understand how penalty amounts were determined

Because the Bureau had not established guidelines for considering the six factors, the mine operators did not know how the factors should be considered and weighted in determining the amount of a penalty. Considering the significance of the dollar amounts of many penalties assessed and the inherent subjectivity in determining the amounts assessed, it appears reasonable that the mine operator should be advised of the guidelines used in assessing penalties

In addition to submitting a written protest, a mine operator may request a meeting with an assessment officer to discuss his protest. We noted that a significant portion of an assessor's time was spent in such meetings. The chief assessment officer estimated that about 35 percent of the time of three assessment officers was spent meeting with mine operators. Records of these meetings were not maintained, and we could not identify the cases for which such meetings were held. If mine operators knew how the six factors were considered by the assessor, however, the need for these meetings and the number of protests could be reduced

An official of the Solicitor's Office informed us early in April 1972 that he believed broad guidelines could be established on the basis of experience under the act and that his office was working on a response to a request from the Bureau for assistance in preparing guidelines. On April 21, 1972, the Solicitor's Office forwarded suggested guidelines to the Director, Bureau of Mines, for his consideration. A Bureau official informed us on May 24, 1972, that the suggested guidelines were being studied but that a decision had not been reached on their use

INFORMATION IN PROPOSED ASSESSMENT ORDERS

The act requires a finding that a violation did occur and requires consideration of six factors in determining the amount of a penalty.

The Subcommittee requested our opinion on whether the findings of fact must include explanations of the consideration given to the six factors and whether the explanations must therefore be included in the proposed order of assessment sent to the mine operator

Examination of the act and its legislative history did not disclose anything which might be helpful in answering the Subcommittee's questions. We are of the opinion that, in the absence of some indication of intention to the contrary, there is nothing in the wording of subsection 109 (a) (3) which would require a conclusion that explanations of the consideration given the six factors should be included in the findings of fact. The six factors are concerned with the amount of penalties, while the findings of fact are required to support findings of violations.

Accordingly, it is our view that, although the six factors must be considered, a description of how the factors were actually considered in determining a specific penalty does not have to be given in the proposed order of assessment sent to the mine operator. In view of the significance of the dollar amounts assessed and the inherent subjectivity in determining the amounts assessed, it appears reasonable that any guidelines developed for use in assessing penalties should be made available to mine operators

DOCUMENTATION AND REVIEW OF ASSESSMENT ACTION

Proposed orders of assessment should be reviewed on a test basis by Assessment Office officials to evaluate assessor performance. However, documentation on how the penalty amount was determined was inadequate. The assessment worksheets, the only documentation of the assessment action, listed only the health and safety standards violated and the dollar amounts of the initial assessment and the reassessment for each penalty. There was no documentation showing how or

whether the assessor considered (1) the six factors in arriving at the penalty amount or (2) the mine operator's protest when reassessing the case. In our opinion, such documentation is necessary for assessment officials to understand the reasoning behind an original assessment and to facilitate a management evaluation of an assessor's performance and of the overall assessment function.

In a case consisting of 54 violations, the mine operator, in protesting all violations, said that he considered the penalties too high, but he provided specific information on only four. The assessor reduced penalties for the four violations and also for 33 others, 31 of which were reduced 50 percent or more below the initial assessment amounts. There was no documentation showing the bases for the initial penalties or for the amounts of the reassessments.

CONCLUSIONS

The consideration of each factor could be improved through the issuance of guidelines defining each of the six factors and describing the consideration and weight that should be given each factor in determining the amount of a penalty. Adequate documentation should be required to show the consideration given each factor in assessing a penalty.

These guidelines should be made available to the mine operators so that they would better understand how the penalties were assessed.

RECOMMENDATIONS TO THE SECRETARY OF THE INTERIOR

We recommend that the Director, Bureau of Mines, be required to

- Issue guidelines defining each of the six factors, and describing the consideration and weight that should be given each determining the amount of a penalty
- Make the guidelines available to mine operators

--Provide for assessors to adequately document in the Bureau's files the consideration and weight given each factor in assessing a penalty

CHAPTER 5

NEED FOR MORE TIMELY AND EFFICIENT

COLLECTION ACTION

Delays in establishing collection procedures and in initiating collection actions resulted in a significant number of penalty assessment cases on which collection action had not been taken as of December 31, 1971, and in slow collection of penalties.

Although assessments of penalties began in February 1971, initial collection actions did not start until June 1971. Collection procedures to implement the Federal Claims Collection Act were not established until August 1971. Of the estimated 1,785 assessment cases as of November 30, 1971, which, on the basis of the Department's collection procedures, should have been acted on, no action had been taken on about 60 percent of the cases and, on the basis of a GAO sample, it appears that action on the remaining 40 percent had not been prompt.

The Bureau did not have an adequate management control system to readily identify cases requiring collection action.

DELAYS IN ESTABLISHING COLLECTION PROCEDURES

The Assessment Office began assessing penalties in February 1971 and cases requiring collection action could have occurred as early as March 1971. Under Bureau procedures a collection action is required when a mine operator does not respond to an assessment order within 30 calendar days from its issuance. An Assessment Office official informed us that the first attempt to collect penalties was in June 1971.

The initial collection procedures established by the Bureau provided for sending one letter (if the mine operator had not responded to the proposed assessment order within 30 days) notifying the mine operator that the proposed assessment order was final and that payment was due. When this procedure did not result in the collection of the

penalty assessed, Bureau procedures required that the case be forwarded to the Solicitor's Office for collection by filing a petition for enforcement in a U S district court.

Officials of the Solicitor's Office stated that general penalty assessment procedures had been discussed with the Department of Justice but that specific collection procedures had not been coordinated during the initial planning. We were informed by an official of the Solicitor's Office that in July 1971, when first attempts were being made to effect collections through planned legal action, the Department of Justice first became aware of the Bureau's collection procedures.

In a letter to the Staff Associate to the Director of the Bureau, dated July 21, 1971, the Associate Solicitor stated:

"We have recently discussed procedures for the enforcement of civil penalties assessed by the Bureau with the Department of Justice ***. The Department of Justice has indicated that enforcement actions under Sec. 109(a)(4) of the Federal Coal Mine Health and Safety Act will be filed only after compliance with the Federal Claims Collection Act of 1966."

Collection procedures were issued by the Solicitor's Office on August 23, 1971, to comply with the Federal Claims Collection Act and the related regulations issued jointly by the Department of Justice and GAO in the Code of Federal Regulations (4 CFR 101).

The Department of the Interior's procedures provide for a personal contact attempt with the mine operator and for three demand letters at 30-day intervals in accordance with the requirements of the regulations. When these procedures do not result in the collection of the penalty assessed, the case is referred to the Solicitor's Office for forwarding to the Department of Justice for action in a U.S. district court.

The Subcommittee requested our opinion as to whether the Bureau can charge interest for late payment of civil

penalties by mine operators. The joint Department of Justice/GAO regulations (4 CFR 102.10) provide that prejudgment interest cannot be demanded or collected on civil penalty claims unless the statute under which the claim arises authorizes the collection of such interest.

Since the Federal Coal Mine Health and Safety Act of 1969 contains no such authorization, we must conclude that the Bureau cannot charge interest for late payment of civil penalties.

DELAYS IN COLLECTION ACTIONS

As of November 30, 1971, we estimate that there were about 1,785 assessment cases on which, on the basis of the Department's procedures, the Assessment Office should have been taking collection action. Bureau records indicated that as of December 31, 1971, some collection action had been taken on 718 cases, or about 40 percent. In the remaining 1,067 cases, no collection action had been taken. A GAO sample¹ of 50 of the 1,067 cases indicated that collection action was an average of 53 days overdue.

Bureau records indicated that as of December 31, 1971, payments had been received on only 74 of the 718 cases on which the Assessment Office had taken collection action. Payments had been received from 34 operators after the first demand letter, from 25 operators after the second letter, and from 15 operators after the third letter. We were informed by an Assessment Office official in late January 1972 that, for about 350 cases, the mine operators had been personally contacted, but that few payments had resulted.

Our examination of 30 of the 718 cases which were subject to the Federal Claims Collection Act showed that the initial demand letters were sent about 43 days after the required time.

The management control system used for identifying cases subject to collection action was not effective because, under the system (later revised), several records had to be reviewed to determine whether a case was subject to collection action. A Bureau official stated that the time and effort involved in reviewing several records were problems and that the currency and completeness of the recorded information were questionable.

The Bureau recognized that the system used to identify cases for collection action was inadequate. Therefore a revised system for controlling cases was established in October 1971. However, the cases assessed prior to October 1971 were

¹The 50 cases were randomly selected from the 1,067 cases in which the penalties were assessed subsequent to July 1971.

not initially included in the revised system. The Chief of the Assessment Office stated that by March 1972 these cases had been included in the revised system. The development of the revised management control system is discussed more fully beginning on page 13.

According to the Chief of the Assessment Office, primary efforts have been and continue to be directed toward assessment of penalties, and the Office's attempts to collect penalties and refer cases for hearings have been secondary. Emphasis was placed on assessment of penalties because it was important to establish to the mine operator the predictability that violation of a regulation would result in an assessment of a penalty. The Chief of the Assessment Office considered the fact that collection action had been taken on 40 percent of the cases was favorable under the circumstances.

In our opinion, timely collection action is as important as timely assessment of penalties. For penalties to be an effective compliance tool, a mine operator must know that, if a penalty assessment is not paid within the required time, it will be followed by timely and aggressive collection action.

Collection cases forwarded to Department of Justice

During February 1972 the Solicitor's Office forwarded the first group of collection cases to the Department of Justice for enforcement in a U.S. district court. We were informed by the Solicitor's Office and the Department of Justice that the Department of Justice had requested additional information on the need for the inclusion of a finding of fact in each case, as required by the act. As a result of an agreement reached by the two agencies, the Department of the Interior added to each case file a statement that the violations cited in the assessment order did, in fact, occur and that the assessed penalty was final.

A Department of Justice official informed us that the incorporation of the findings of fact in finalized cases was an attempt to rigidly adhere to the letter of the law and did not mean that the previous procedures were invalid.

As of April 10, 1972, 136 cases had been forwarded to the Department of Justice for collection action. We noted that the penalty amounts for 100 of these cases ranged from \$25 to \$5,125 and the amounts for 41 of these cases was under \$250.

The regulations issued to implement the Federal Claims Collection Act provide in the Code of Federal Regulations (4 CFR 105.6) that agencies will not refer claims of less than \$250 to the Department of Justice for litigation unless, among other things, referral to Justice is important to a significant enforcement policy. The Solicitor's Office believes that these cases are related to enforcement of the Federal Coal Mine Health and Safety Act of 1969.

APPLICABILITY OF FEDERAL CLAIMS
COLLECTION ACT PROCEDURES

The Federal Claims Collection Act of 1966 (31 U S C 951) was designed to promote the more efficient and equitable collection of claims by the Government, by requiring the heads of agencies to attempt collection of all claims for money or property arising from activities of that agency. The act and its implementing standards further authorized such agency head to compromise, terminate, or suspend collection actions on claims not exceeding \$20,000, under certain conditions. These conditions are the inability of the debtor to pay, the inability to locate the debtor, the cost of collection action exceeding recovery, and the claim's being without legal merit or unsubstantiated by evidence. The act was also designed to reduce the amount of litigation previously required in the collection of claims and to reduce the volume of private relief legislation in the Congress.

In view of these purposes, the intention was that the Federal Claims Collection Act be given the widest possible application. It specifically exempts only such claims as those involving fraud or misrepresentation or those based on conduct in violation of the antitrust laws.

The Federal Claims Collection Act has been implemented by standards issued jointly by the Department of Justice and GAO (4 CFR 101). It should be noted that one section (4 CFR 102.6) specifically mentioned the collection of statutory penalties. The Federal Claims Collection Standards (4 CFR 101.4) states that the act does not intend to preclude agency disposition of any claim under other statutes. Section 101.4 cites, as an example, the Federal Medical Care Recovery Act (42 U S C 2651), which contains specific provisions for the compromise, settlement, or waiver of claims. The Federal Coal Mine Health and Safety Act does not contain any such provision applicable to the civil penalties under the act. Therefore we must conclude that the Federal Claims Collection Act and implementing standards are applicable to the collection of civil penalties under the Federal Coal Mine Health and Safety Act.

Because of the joint responsibilities of our office and the Department of Justice under the Federal Claims Collection Act, we requested the views of that Department in the matter. In its reply dated March 24, 1972, the Department of Justice reached a conclusion similar to ours and stated, as follows

"While we conclude that the Federal Claims Collection Act and its implementing regulations apply as a general matter to civil penalty claims, including those assessed under the mine safety statute, we do not suggest that referrals should be unduly delayed for a slavish adherence to all the detailed procedures prescribed in the joint regulations. See in this connection 4 CFR 101.2¹

"The enforcement considerations involved are such that our Criminal Division does not expect compromise to be explored, for example, though many of the penalties assessed are so small as not to equal our costs of litigation, and thus have little deterrent value. The Assessment Officer, Bureau of Mines, advises that collections are made on in excess of 20% of the penalties assessed as a result of personal interviews. 'The personal interview is the vocal point of all good collection procedures.' Wallace, Starting and Managing a Small Credit Bureau and Collection Service (SBA 1959), page 135. Thus we would expect personal collection interviews to have been conducted in these cases to the extent feasible, particularly in cases where no hearings have been held and the mine operators, who frequently do not have retained counsel, may not have understood the significance of assessment notices. If this is done our Criminal Division is prepared to waive the formal demand procedures normally required under the joint regulations

¹This section states that failure of an agency to comply with any provision of the regulations shall not be available as a defense to any debtor

"Representatives of our Criminal Division will be glad to consult further with Interior representatives on harmonizing the application of the two Acts."

CONCLUSIONS

The Bureau needs to take more timely and efficient action to collect penalty assessments. Also the Bureau's management control system should be used to readily identify cases requiring collection action and to highlight areas needing management attention.

The Federal Claims Collection Act and implementing standards are applicable to the collection of civil penalties under the Federal Coal Mine Health and Safety Act; however, the Department of Justice and GAO agree that referrals of cases to the Department of Justice for court action should not be unduly delayed for rigid adherence to all the detailed procedures prescribed in the standards.

RECOMMENDATION TO THE SECRETARY OF THE INTERIOR

The Director, Bureau of Mines, should be required to give the same priority to collecting penalties as that given to assessing penalties.

CHAPTER 6

ASSESSMENT OFFICE STAFFING AND ORGANIZATION

The Assessment Office was established in January 1971, but funds were not requested in the fiscal year 1971 budget for this office. In fiscal year 1972, seven assessor positions were authorized in an appropriation approved in August 1971 and five were authorized in an appropriation approved in December 1971. By December 31, 1971, the office had filled only four of the 12 permanent assessor positions authorized in fiscal year 1972 appropriations because of problems in attracting qualified personnel and because of manpower limitations imposed by the Civil Service Commission in August 1971.

The Assessment Office began developing plans in November 1971 to decentralize the assessment operation by establishing four field offices. Officials believed that they would be able to fill the vacant assessor positions by hiring mine inspectors who had been temporarily detailed to Washington, D C , and who had functioned as assessors.

BUREAU ACTION TO OBTAIN STAFF

An official in the Bureau's personnel office stated that, during the latter half of fiscal year 1971, a specific number of personnel had not been authorized for the Assessment Office and that the assignment of temporary and detailed personnel had been handled on an informal basis. Only two or three assessment officers were assigned during the latter half of fiscal year 1971.

According to Bureau and Assessment Office officials, early efforts to obtain assessment officers were delayed by the lack of a civil service job description for the position and by problems in attracting personnel considered qualified by the Assessment Office. To supplement the staff of assessment officers, mine inspectors were temporarily detailed to the Assessment Office and functioned as assessors. These temporary details generally lasted for 30 days, and some inspectors had been assigned several times. Efforts to persuade these inspectors to permanently join the

Assessment Office were hindered, according to officials of the Bureau's personnel office, by the fact that the grade levels assigned to the positions of assessors were about the same as those of supervisory inspectors, and, therefore, there was not enough inducement for the inspectors to come to Washington, D C

The administrative and clerical staff consisted of permanent and temporary personnel. An Assessment Office official attributed the inability to hire additional permanent clerical staff to the low-grade structure initially allocated by the Bureau's personnel office for these positions. A Bureau official informed us that grade levels for the clerical positions were raised during December 1971.

During April 1971 the Bureau submitted an amendment to its fiscal year 1972 appropriation request, which listed the Assessment Office as a separate budget activity and which requested \$700,000 to provide for seven assessment officers, five technical advisors, four staff assistants, and 22 clerical positions, a total of 38 personnel. The Assessment Office consisted of two groups: the assessment group, which was responsible for assessing penalties, and the compliance assistance group, which was responsible for providing technical assistance to Bureau personnel and to mine operators. The appropriation was approved on August 10, 1971.

From July through September 1971, there were three assessment officers and numerous inspectors were detailed to the Assessment Office for duty as temporary assessors. The administrative and clerical employees gradually increased to about 13, including nine permanent employees. According to an Assessment Office official, efforts to obtain assessment and clerical employees were further hindered by limitations imposed by the Civil Service Commission in August 1971.

The Assessment Office had not filled the positions for which funds had been appropriated in August 1971 when, in October 1971, a supplemental appropriation request was submitted for \$250,000 to provide for five additional assessment employees and 14 support employees. The assessment employees were to be assigned to the field to conduct meetings on protests with mine operators at the local level.

The supplemental appropriation was approved on December 15, 1971

During September and October the Assessment Office submitted three requests to the Bureau's director to obtain 23 additional employees. Approval was obtained from the director. Personnel office records indicated that 10 employees were permanently assigned during October through December 1971. As of December 31, 1971, the assessment group consisted of 18 permanent administrative and clerical employees and four permanent assessors.

PLANNED ESTABLISHMENT OF FIELD ASSESSMENT OFFICES

In November 1971 the Assessment Office began developing plans to decentralize the assessment operation by establishing four field assessment offices, each to be staffed with assessment, clerical, and administrative employees who would be responsible for the entire penalty assessment and collection process for mines assigned to that office. The Assessment Office in Washington, D C, would set policy for, maintain control over, and monitor the field office operations, and would handle assessment functions for mines not assigned to a field office.

The rationale given by Assessment Office officials for establishing the field offices included problems in attracting qualified assessment personnel to Washington, D C, and the extensive travel time required by the assessment officers when conducting field seminars on the penalty section of the law. By locating the field offices in the coal mine areas, the Assessment Office believes that some of the inspectors acting as temporary assessors would agree to become permanent assessors and would be more readily available to educate mine operators in the various aspects of the act and to conduct meetings with mine operators to discuss their protests.

The documentation for the proposed decentralization of the organization was submitted by the Assessment Office to the Department for approval in January 1972. An Assessment Office official advised us that it might take about

6 months for all the required paperwork to be completed and approved In April 1972 the Chief of the Assessment Office informed us that one field office was established on a pilot basis in Norton, Virginia

CHAPTER 7

SCOPE OF REVIEW

Our review was directed primarily toward examining into the actions taken by the Department of the Interior and its Bureau of Mines, its Office of Hearings and Appeals, and its Office of the Solicitor in administering the penalty provisions of the Federal Coal Mine Health and Safety Act of 1969. The review was conducted primarily at the Department's and the Bureau's headquarters offices in the Washington, D.C., area.

We reviewed the procedures for implementing the penalty provisions of the act and examined pertinent documents, reports, records, and files. We obtained information from the Bureau's computer file at Denver, Colorado, and interviewed Department and Bureau officials.

HENRY S REUSS WIS CHAIRMAN
 JOHN E MOSS CALIF
 DANTE B FASCELL, FLA
 FLOYD V HICKS WASH
 JOHN CONYERS JR MICH
 BELLA S ARRUGO N Y

GUY VANDER JAQT MICH
 GILBERT GUDE, MD
 PAUL N MCCLOSKEY JR CALIF
 SAM STEIGER ARIZ

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NINETY-SECOND CONGRESS
Congress of the United States
House of Representatives
 CONSERVATION AND NATURAL RESOURCES SUBCOMMITTEE
 OF THE
 COMMITTEE ON GOVERNMENT OPERATIONS
 RAYBURN HOUSE OFFICE BUILDING ROOM 8340-B
 WASHINGTON D C 20515

September 24, 1971

Mr. Elmer B Staats
 Comptroller General of the United States
 441 G Street, N W
 Washington, D C 20548

Dear Mr Staats

This Subcommittee is conducting an investigation of a proposal of the Interior Department to hire a public relations firm to conduct "a full-scale, all-media education program" aimed at "motivating" coal miners to adopt safer working habits. In connection with this investigation, we asked the Interior Department to provide to us information concerning its practices and procedures for assessing and collecting civil penalties for violations of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173)

Enclosed for your information is a copy of our letter of July 9, 1971, to Secretary Morton and his reply of July 28, 1971. Also enclosed is a copy of our letter of January 29, 1971, to the Department, and Assistant Secretary Dole's reply of March 2, 1971, concerning the civil penalties regulations published on January 16, 1971 (36 F R 799)

I

You will note from this correspondence that during the period of January 16, 1971 to April 1, 1971, the Bureau of Mines issued 1,526 proposed assessment orders. Of that number, all but six (1,520) proposed assessment orders were "protested" as provided under the regulations. Of the number protested, Secretary Morton states that 1,430 proposed assessments (1 e over 94 percent) were "amended"

Thus, nearly all of these proposed assessments were "amended" after protest. In many cases, we understand that this is done through negotiations with those against whom the assessments were made or with their representatives. The Department's letter does not indicate whether the assessments were raised or lowered in each case. If the Bureau's practices and procedures for assessing penalties are carried out as required by the law and regulations, we cannot understand why over 94 percent of the assessments would be required to be "amended" on protest.

APPENDIX I

Mr Elmer B Staats

Page two

September 24, 1971

Secretary Morton's letter of July 28 states that

"The six factors required by law have been taken into consideration in arriving at all assessments both before and after April 1, 1971 "

Enclosed is a copy of a memorandum dated June 8, 1971, from the Director of the Bureau of Mines to the Department's Office of Survey and Review which comments on the GAO report (B-170686) of May 13, 1971, to the Senate Subcommittee on Labor. You will note on page 5 of the memorandum the Director states that only 'since April 1, 1971' has the Bureau's Assessment Officer taken these six statutory factors into consideration. We are concerned about this apparent discrepancy and, more importantly, the methods and procedures used by the Assessment Officer in applying these six statutory factors to each violation.

II

A Bureau news release of September 16, 1971, states

The Bureau, to the limit of its resources, has enforced the Federal Coal Mine Health and Safety Act rigorously and fairly. As of the beginning of September, 48,346 penalties, totalling more than \$6.3 million, had been proposed against mine operators for violations of the Act, and over \$800,000 of that amount had been paid.

We are concerned that only \$800,000 of assessments totalling \$6.3 million has been collected by the Bureau to date. On inquiry, we learned that only about 400 assessments are in various stages of appeal.

We understand that only three people have been assigned to the job of assessing and collecting civil penalties. We have been informed, however, that the Bureau estimated some time ago that at least fifteen people would be needed to do this work. We are concerned that the congressional objectives of the civil penalties provision of the 1969 law, which are to encourage compliance with the law and to achieve improved health and safety for the coal miners, will be defeated unless such penalties are assessed and collected expeditiously and efficiently.

We would appreciate your investigating the Department's administration and enforcement of the civil penalties provisions of the 1969 law and the regulations issued thereunder.

Mr Elmer B Staats

Page three

September 24, 1971

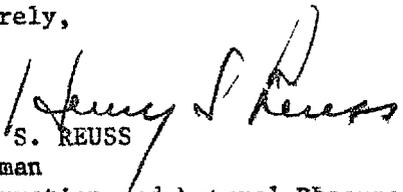
III

We understand that the Department believes that the Federal Claims Collection Act of 1966 (31 U S Code 951-953) applies to the collection of civil penalties under the 1969 law. Under the 1966 law, the Department has instituted a lengthy collection procedure involving the sending of several collection letters before instituting judicial proceedings to collect the penalties. We would appreciate your advising us whether the 1966 claims law applies to these penalties. If you conclude that it does, please review the efficiency of the procedures utilized by the Department under that law to collect the penalties.

IV

We request that the GAO provide to us a report of your findings and recommendations. We are most anxious to complete our investigation and report our findings to the House before the end of this session of Congress. We therefore would appreciate receiving your report by November 1, 1971. Since the General Accounting Office has already conducted extensive investigations of the Department's administration of the 1969 law, we trust you will be able to provide the report to us within that time. Before finalizing your report, we would appreciate your discussing your findings with our Subcommittee's staff.

Sincerely,



HENRY S. REUSS
Chairman
Conservation and Natural Resources
Subcommittee

Enclosures